

# ORM NEWS

**From the Office of the Deputy Assistant  
Secretary for Resolution Management  
Department of Veterans Affairs**



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April 2002

## *From the Deputy Assistant Secretary*



We are expanding ORM's role to help us provide additional services to VA.

We have formed a group to conduct on-site visits to VA facilities to assess the work environment and help identify causes of and ways to reduce EEO complaints. Two new employees, **Alice Bell** and **Rose Chambers**, have joined ORM and will work in this area. This is a tool that will help in the **prevention and early intervention or resolution** of complaints.

I believe these on-site visits will help improve the VA work environment and move us closer to helping facilities focus on identifying the causes of work place disputes and establishing effective methods to address these issues using early intervention tools such as ADR or mediation. These visits will also help us identify best practices that are being used by facilities to encourage better working relationships between management and employees.

This is part of our employer of choice strategy that involves prevention, early intervention or resolution, timely complaint processing and safeguards (breach of settlement agreements). Our focus includes more than just complaint processing as we provide more "value added" service to VA.

I will talk more about this in future editions of the newsletter and in our all employee conference calls.

/s/

**James S. Jones**

## **Highlights of Regulations and Programs**

*THE FOLLOWING ARTICLE, WRITTEN BY CHARLES R. DELOBE, DIRECTOR, OFFICE OF EMPLOYMENT DISCRIMINATION COMPLAINT ADJUDICATION (OEDCA), WILL APPEAR IN THE SPRING 2002 EDITION OF THE "OEDCA DIGEST."*

### **WHITE EMPLOYEE AND AFRICAN-AMERICAN WORKERS WITH WHOM HE ASSOCIATED SUBJECTED TO RACIAL HARASSMENT**

In a recent, highly publicized case, OEDCA accepted and fully implemented an EEOC administrative judge's finding that a white employee at a VA hospital had been subjected to race-based harassment because of his association with Black coworkers.

The complainant was a carpenter and maintenance mechanic. Over a period of two years, he had been assigned the position of acting work leader for three independent projects. In connection with these projects, he was assigned crews of Compensated Work Therapy (CWT) workers, most of whom were African American. The CWT workers were veteran-patients who, as part of their therapy, worked on the projects for nominal wages. While directing their work on these projects, he befriended and supported the black CWT workers, teaching them carpentry skills and assisting them in getting their GEDs.

The complainant remained assigned to the carpentry shop, where he was supervised by a white male, and was required to return to the carpentry shop on a daily basis throughout the course of the projects. While there, he was often called "n..... lover" and other racially derogatory names by his white coworkers. These coworkers also brought racist audio and videotapes to the shop, and frequently used the "N" word and other racial slurs and epithets when referring to the black workers under his supervision. He also experienced threats of physical violence by a white employee of the carpentry shop because of his association with the Black workers.

The complainant and several of the CWT workers met with the project manager to express their concern over the racial hostility in the carpentry shop. The complainant also spoke with two service chiefs regarding the problem. However, other than meeting with the offending employees and later issuing a memo stating that racial harassment would not be tolerated, management officials did nothing to correct the problem.

When the nursing home project ended, the complainant was required to

return to the carpentry shop, despite his request to be assigned elsewhere because of the racially hostile environment and concerns over his safety. The day after he returned, a physical altercation took place between one of the carpentry shop employees and the complainant, resulting in the issuance of reprimands to the complainant, three white coworkers, and the complainant's supervisor. All reprimands, except for the complainant's, were later downgraded to admonishments.

Within days of the altercation in the shop, the complainant left work upon the advice of his physician. He did not return for a period of approximately six months. Upon his return, he was reassigned to a position as a driver, where he complained of several other incidents of racial harassment. The other employees of the carpentry shop, as well as the supervisor, remained in their positions with the shop.

The EEOC administrative judge and OEDCA found persuasive evidence to support the testimony of the complainant and his black coworkers regarding the racial hostility in the carpentry shop. Moreover, the VA was found liable for the harassment because the complainant's immediate supervisor was aware of the problem and took no corrective action. In addition, higher-level management officials either did nothing when informed of the problem, or their attempts to address the problem were ineffective or inappropriate. OEDCA's Final Order directed the Department to pay the complainant \$48,369.41 in attorney's fees and \$144,549.56 in compensatory damages. It also directed the Department to take appropriate corrective action with respect to the workers and supervisors involved, and to take whatever other actions are necessary to ensure that violations similar to those found in this case do not recur.

From a legal standpoint, the lesson of this case is simple. Failure by management officials to take prompt, appropriate, and effective action as soon as they become aware of a hostile environment will surely result in the Department being held liable.

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### **ORM Awarded CFC Presidential Award**

The CFC President's Award was awarded to ORM for making contributions of \$275 per person or for having 75% or more participation. ORM was one of 17 VA Central Office organizations to receive the President's Award.

(The following is an article presented by cyberFEDS at [www.feds.com](http://www.feds.com))

## **Profile: EEOC's Hadden is confident the EEO system is on the Mend**

By [Drew Long](#), Washington Bureau

WASHINGTON (March 18) -- The public sector equal employment opportunity system is one of the most heavily used and frequently maligned processes in the federal government. Civil rights advocates and federal employees often cite the amount of time it takes to process EEO complaints and the general lack of accountability when the process finally does work.

On a snowy Saturday in January, Carlton Hadden sat before 200 frustrated and angry federal workers listening to these charges and more. As director of the Equal Employment Opportunity Commission's Office of Federal Operations, Hadden was their target.

For over an hour, he listened to the problems the workers had faced, either with their managers or in the EEO system. Some audience members wanted to know why their complaints take months or years to process. Others simply jeered.

During the conference, called by the NAACP Federal Sector Task Force, the group handed out its Interim Report III, claiming, among other things, that "The federal EEO system is in shambles and in need of major surgery."

This was not Hadden's first appearance at the task force's national summit meeting, nor is it likely to be his last. Hadden said he understands the employee's frustrations with the EEO system and the commission, but does not believe the government's EEO system is "in shambles."

### **Comparatively good shape**

"The federal sector EEO system is in very good shape compared to how it was 10 years ago in the early 1990s," Hadden told cyberFEDS® in a recent interview. In fact, the system is in better shape than it was three years ago. In January 1999, the number of EEOC appeals had peaked at 11,918, with thousands of additional cases working their way through the agencies.

Soon after, the EEOC implemented a number of system changes and began to reduce the imposing caseload. In addition to requiring agencies to implement alternative dispute resolution programs, the EEOC gave its administrative judges authority to make final decisions, improved its data collection and implemented additional training and outreach programs.

By the close of FY 2001, the EEOC's Office of Federal Operations reduced the number of appeals pending by 37 percent to 7,536.

Despite the success of reducing the appeals load, Hadden acknowledged that it still takes "entirely too long" for a case to move through the system. While the EEOC has taken steps to improve its case processing, much of the delay still

occurs at the agency level, he said. "We certainly have the ability to address [the issue of timely case processing]," Hadden said. "We do have oversight authority of the EEO system in regard to agencies."

To that end, Hadden said, the EEOC has pushed agencies to engage in ADR programs, encourage management participation when mediation is an option and complete EEO investigations within the mandated 180 days.

Hadden said the glut of EEO cases is not entirely the result of an inefficient system. In some cases, employees take advantage of the system to resolve communication or personality problems with their managers.

Hadden said it is "a little easier" to file an EEO complaint in the federal sector than the private sector. As a result, the EEO complaint process has become a means to resolve differences that do not necessarily belong in the system. In FY 1999, the last year for which statistics are available, agencies dismissed 9,903 complaints, many for lack of merit.

New regulations on the handling of complaints were issued with the revision of 29 CFR part 1614, which went into effect in November 1999. Further statistics compiled under the new system will be released within the next few months, according to the EEOC.

### **Productivity loss**

Although many complaints were without merit and were dismissed, the complainants nevertheless used agencies' time and resources. Cases dismissed are the quickest out of the system, but they still took an average of 204 days to process in FY 1999.

"The incentives are there to deal with EEO complaints," Hadden said. "Disputes take time. And whenever you have a dispute in the workplace, it takes away from productivity."

Because of the potential for wasted time and energy, Hadden said, managers should take the initiative to resolve the issue quickly and informally rather than force a disgruntled employee into the EEO system. "Most good managers want to get in there and deal with the issue," Hadden said. "Managers who work with their employees and staff should not have many problems."

However, many managers "personalize the complaints" filed by their employees and become resistant to dealing with the issue informally. To avoid this situation, managers need to learn to communicate more effectively and remain open to workers' concerns.

"What we really haven't dealt with is that we are a society of many different cultures and people," Hadden said. "That's not to say there isn't going to be conflict, but we need to have dialogue. It's not always easy."

## **Office of Resolution Management (ORM) Web-based Tracking System Update**

Public Law 105-114, dated November 21, 1997, states that at the end of each calendar quarter, the Assistant Secretary for Human Resources and Administration shall submit to the Committees on Veterans Affairs of the Senate and House of Representatives, a report summarizing the employment discrimination complaints filed against senior management officials. This report applies to complaints filed against individuals on the basis of "such individuals' personal conduct and shall not apply in the case of complaints filed solely on the basis of such individuals' positions as officials of the Department". The Office of Resolution Management defines personal conduct as "the act or action directly committed by the senior manager that affects the terms or conditions of an individual's employment".

There is a need to change how we input the senior manager's information in the ORM Web-based Tracking System. The senior manager's information is located in the informal case log screen under "Responsible Management Official (RMO)" information. The Web-based Tracking System Manual, page 3-3, provides instructions that, "if the management official is a GS-15 or above, check the senior manager's box".

Errors have been found in the Quarterly Senior Managers Report as a result of the input of inaccurate data identifying senior managers. For example, the Chief of Pharmacy Service and the Chief of Dental Service are listed as senior management officials. In some cases senior management officials whose personal conduct was not directly involved in a case have been listed in the report.

All EEO counselors and other individuals involved in updating the RMO screen are required to check the senior manager's box only if the RMO's title is listed below, and if the senior management official's personal conduct was directly involved in the case as defined above.

The following positions within the Department of Veterans Affairs are covered by Public Law 105-114:

- The Secretary
- The Deputy Secretary
- The Under Secretary for Health
- The Under Secretary for Benefits
- Each Assistant Secretary for Veterans Affairs
- Each Deputy Assistant Secretary for Veterans Affairs
- The Director of National Cemetery System

**The General Counsel**

**The Chairman of the Board of Contract Appeals**

**The Chairman of the Board of Veterans' Appeals**

**Directors, Associate Directors, Chiefs of Staff, and the \*Associate Director for Patient Care Services, of each medical center of the Department (includes Regional Offices)**

**Each program director of the Central Office of the Department of Veterans Affairs**

The integration of VA Health Systems created an “Associate Director for Patient Care Services” position. The Public Law does not include this position because it was created subsequent to the Law. This position must also be reported in the senior manager’s report if the official’s personal conduct was directly involved in a case.

The Office of Policy and Compliance is planning to enhance the Web-based tracking system and will refine the RMO screen to make it more user friendly when generating a report.

(For more information on our Web-based Tracking System, please contact Joan Hanson, Chief, Office of Policy and Compliance, at (202) 501-2680)

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## **General Council Update on the Use of Government Credit Cards**

1. **If you have been issued a government credit card, you are required to use it for official travel, including car rental and lodging expenses.**

We have reviewed several cases where an employee has used a personal credit card for official travel and then sought reimbursement on a travel claim. This is usually the case where the employee is getting frequent flyer miles on his/her personal credit card. There is a misperception that since the law has changed on retaining frequent flyer miles for personal use, an employee can now use a personal card for official business and earn the points on the card. This is not the case. Absent exigent circumstances, an employee would be subject to disciplinary action for violating the directive to use the government credit card for official travel.

2. **You may retain for your personal use any frequent traveler points earned as a result of official travel.**

This is a different situation than described in the previous paragraph. Most airlines and many hotels and rental car companies award "points" for travel

or lodging. You are normally required to enroll in the program and you receive points for actual travel or stays at a hotel/motel. If you are enrolled in a program and earn points during official travel or lodging, you are allowed to retain those points for personal use.

**Example:** You are required to travel to Atlanta and stay overnight. Your duties require you to have a rental car during your stay. Your staff makes reservations for the flight, rental car and lodging. You should direct your staff that all of these expenses must be on your government-issued credit card. You check in at the airport and the agent asks if you have a frequent flyer number. You may give them your personal account number and retain the miles. At your destination you rent a car. The counter representative asks for your credit card and asks if you have a frequent traveler account. You must use your government credit card, but you may give them your personal account number. You check into the hotel and the clerk asks for your credit card to charge the room. You must give them your government credit card, but you may give them your personal traveler account number, i.e., Hilton Honors, Marriott Rewards, etc., and retain the points in your personal account.

Finally, you go to lunch with a VA contractor during your visit. You split the bill pro rata, as you should on every occasion with a contractor, i.e., a "covered source."

Congratulations, you stayed out of jail...this time!

These are complicated rules and anyone can get confused. We are available to answer your questions by calling our Ethics Group at (202) 273-6336, or many answers are available on the VA Ethics Program Intranet site at <http://152.125.42.70/ethics/>  
(Tim S. McClain, General Counsel, Department of Veterans Affairs)

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## **Use of Cell Phones while driving Government Vehicles**

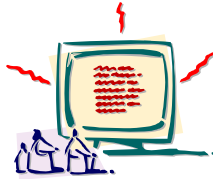
The General Service Administration issued a recent bulletin, in the Federal Register, on the use of cell phones while driving government vehicles. The bulletin entitled, " Motor Vehicle Management" recommends that Federal agencies should:

- Discourage the use of hand-held wireless phones by a driver while operating motor vehicles owned or leased by the Federal government.
- Provide a portable hands-free accessory and/or a hands-free car kit for government owned wireless phones.
- Educate employees on driving safely while using hands-free wireless phones.



For more information click on: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002\\_register&docid=02-4880-filed](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-4880-filed)

## What's Happening in the Field?



### Bay Pines Field Office

On Thursday, March 28, 2002, the Bay Pines Field Office was visited by **Patrick Kokenge**, Supervisory Administrative Judge, EEOC, Miami District Office, along with two members of his staff.

Judge Kokenge provided helpful tips and information concerning complaint processing for all disciplines: Counselors, Investigators, and Intake Specialists. Cooperative partnerships were developed during this visit between the EEOC Miami District Office, the Bay Pines Field Office, and the Office of Regional Counsel.

The Bay Pines Field Office and the EEOC Miami District Office will work together on issues such as the use of shared neutrals, training, and the development of a computerized investigative summary.

Judge Kokenge applauded the VA for the "excellent" job it does in the compilation of reports of investigations. He congratulated us on the completeness of the investigative reports and indicated his staff of judges relies heavily on the information contained in these reports.

The EEOC Miami District Office has extended an invitation to **Bill Low**,

Field Manager, to be a presenter at the upcoming Technical Assistance Program to be held in Daytona in May.

- ❖ Ms. **Linnell Baker**, EEO Investigator, was selected for an EEO Intake position at Bay Pines. Her promotion was effective on March 10, 2002.

- ❖ **Charese Bentley** and **Lisa Stephens** were both selected for Worker-Trainee positions. Ms. Stephens will be working at the Lake City satellite office and Ms. Bentley will be working at the Bay Pines Field Office.
- ❖ Congratulations to **Randall Mitchell**, EEO Counselor, Lake City satellite office, on receiving his 10-year service pin.

### **Little Rock Field Office**

- ❖ The Little Rock ORM Field Office has collaborated with the EEOC to mediate several private sector EEO complaints. The venture, which was conducted during the week of March 4-8, 2002, was highly successful, as it provided an opportunity for the Office to hone its mediation skills, gain insight in the private sector EEO process, and partner with another Federal Agency. Twelve employees participated in the venture, using the co-mediation model. The Office also works closely with the Central Arkansas Veterans Healthcare System Mediation Program and other ADR Coordinators within its jurisdictional area to mediate disputes. **Willie (Rudy) McIntosh**, EEO Investigator, has resolved 18 out of 19 public and private sector complaints through mediation for both the EEOC and the VAMC.
- ❖ On February 25, 2002, the G.V. (Sonny) Montgomery, VA Medical Center, hosted its 1<sup>st</sup> Annual EEO Awards Ceremony. Program participants included Susan Pendergrass, MD, Deputy Network Director and Clinical Manager and Bruce Triplet, Associate Director. However, the highlight of the program was our own Chief Operations Officer, **Malcolm Porter**. Mr. Porter provided the keynote address, "Celebrating Diversity." As usual, his presentation was very humorous and the message very clear; Diversity is not just about skin color. However, Mr. Porter was not the only representative from the Office of Resolution Management. **Austin Lewis**, Regional EEO Officer, **Wendy A. Whitted**, EEO Intake Specialist, and liaison for Mississippi and **John Jones**, EEO Counselor, provided EEO training in conjunction with the celebration on February 25 and 26, 2002. The Little Rock Field Office is proactive in its efforts to

provide accurate training to its customers. The team provided two sessions for employees and one for supervisors and managers. More than two hundred individuals received training. The two hour sessions highlighted the EEO Complaint Process, the facility's complaint activity, Theories of Discrimination, alternative processes, and the benefits of mediation. The responses from the attendees at the sessions were Great. Education & Training are the Key!

- ❖ **Monaia Fulton**, 16 year daughter of **Michael Fulton**, EEO Program Assistant, has been ranked 4th in her 10th grade class of over 260 students. She recently received letters of interest from three colleges (Yale, Christian Brothers, and Rhodes College). Monaia attends Jacksonville High School where she is a member of the Future Business Leaders of America (FBLA) and is a Praise & Worship leader at her church.

#### *Houston Field Office*

**Gayle Collins**, Intake Specialist, received her 30-year service pin on March 13, 2002.

#### *Los Angeles Field Office*

**Iris Jones**, EEO Counselor, will be recognized at the annual CFC Awards & Luncheon on Thursday, April 11, 2002. Iris will receive a certificate of appreciation for the tremendous time and energy she has contributed to this campaign. We at the Los Angeles Field Office are very proud of her annual participation in this program.

## Did You Know?



**National Public Health Week:** April 1-7

**Daylight Savings Time Begins:** April 7

**Secretary's Day:** April 24

**Take Our Daughters to Work Day:** April 25

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**Reminders:** Click on ORM's Web site at <http://vaww.va.gov/orm> for the latest information on ORM programs, policies, and employee information.

**ORM NEWS** is a monthly publication of the Office of Resolution Management. Please E-mail Terry Washington, External Affairs Program Analyst or Tyrone Eddins, External Affairs Program Manager, to submit your recommendations, suggestions, or comments on the information presented in this newsletter. We can be reached at (202) 501-2800. Back copies of the newsletter can be found on ORM's Web site at <http://vaww.va.gov/orm/NewsEvents.htm>.

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